

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

EARLE E. AUSERMAN, *et al.* \*

Plaintiffs, \*

v. \*

Civil Action No. MJG 01-438

BANK OF AMERICA CORPORATION \*

*et al.*, \*

Defendants. \*

\* \* \* \* \*

**DEFENDANTS' MEMORANDUM IN SUPPORT OF ITS BILL OF COSTS**

Defendants, Bank of America Corporation ("BAC") and Banc of America Auto Finance Corp. ("BAAF") (collectively "Defendants"), through their undersigned counsel, submit this memorandum in support of their bill of costs, stating as follows:

On March 18, 2003, this Court entered summary judgment against the Plaintiffs and in favor of the Defendants in the above captioned litigation. Fed.R.Civ.P. 54 provides that "costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs . . . ." Fed.R.Civ.P. 54(d). The Rule gives rise to a presumption in favor of an award of costs to the prevailing party. *American Medical Security, Inc. v. Larson*, 31 F.Supp.2d 502, 508 (D.Md. 1998) (citing *Teague v. Bakker*, 35 F.3d 978, 996 (4<sup>th</sup> Cir. 1994), cert. denied, 513 U.S. 1153 (1995)). The "trial court possesses broad discretionary powers in the allowance or disallowance of costs within the categories set out in [28 U.S.C. §] 1920." *Advance Bus. Sys. & Supply Co. v. SCM Corp.*, 287 F.Supp. 143, 162 (D.Md. 1968).

Pursuant to Fed.R.Civ.P. 54(d) and 28 U.S.C. § 1920, Defendants request reimbursement for the following costs reasonably incurred in this litigation. *See* Affidavit of Ava Lias-Booker, Esquire, attached hereto and incorporated herein as **Exhibit A**.

A. Transcripts

## (1) Deposition Transcripts

Defendants seek \$7,962.00 for the costs of sixteen deposition transcripts. *See Exhibit B*. The Clerk may tax the costs of transcripts under 28 U.S.C. § 1920(2) where they are necessary for the case. *See Lavay Corp. v. Dominion Fed. Sav. & Loan Ass'n*, 830 F.2d 522, 528 (4<sup>th</sup> Cir. 1987) (citing *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 445 (1987)). The majority of the depositions listed below (Nos. 1-13) are those of the individual Plaintiffs. Due to the unique circumstances presented in this case, *i.e.*, the dearth of factual support for the claims asserted, the elevated and individualized claims of each of the Plaintiffs, and Plaintiffs' counsel's refusal to cooperate with Defendants' requests to depose each of his clients, the Defendants were forced to move to compel the depositions of each of the Plaintiffs. *See* Paper No. 41. After a telephonic hearing on Defendants' Motion and Plaintiffs' opposition thereto, Magistrate Judge Grimm ordered each of the Plaintiffs to submit to depositions upon oral examination. *See* Paper No. 50. Magistrate Judge Grimm further ordered that any Plaintiff residing outside of the 100 mile radius of the Court had to be deposed by telephone or by remote electronic transmission. As each of the Plaintiffs' depositions were necessary to the case at the time they were taken, as confirmed by the order of this Court, and further because certain depositions were required to be taken by video, Defendants request reimbursement for each of those transcripts, as well as the cost of the video transmission, as set forth below.

Defendants also request reimbursement for (a) the transcript costs of the deposition of Plaintiffs' expert witness (Evan Hendricks); (b) the cost of a copy of the transcript of one of Defendants' witnesses who was deposed by Plaintiffs' counsel (Stephanie Adams); and (c) the cost of a copy of the transcript of a third party witness who also was deposed by Plaintiffs' counsel (Susan Cambron). All three of these transcripts were used in connection with the motion for summary judgment which was dispositive of this litigation.

Such use is persuasive evidence of necessity under § 1920. *See Advance Bus. Sys.*, 287

F.Supp. at 165.

Deponent	Rate Per Page	No. Pages	Video Cost	Amount Sought <sup>1</sup>
1. Ronnie Hogue	\$3.50 <sup>2</sup> (Vol. 1) \$3.25 (Vol. 2)	108 (Vol. 1) 47 (Vol. 2)	N/A	\$378.00 (Vol. 1) \$152.75 (Vol. 2)
2. Freda Hogue	\$3.50 (Vol. 1) \$3.25 (Vol. 2)	68 (Vol. 1) 44 (Vol. 2)	N/A	\$238.00 (Vol. 1) \$143.00 (Vol. 2)
3. Paul Werbos	\$3.50	124	N/A	\$434.00
4. Ludmilla Werbos	\$3.50	85	N/A	\$297.50
5. Earle Ausherman	\$3.50 (Vol. 1) \$3.25 (Vol. 2)	54 (Vol. 1) 65 (Vol. 2)	N/A	\$202.50 (Vol. 1) \$211.25 (Vol. 2)
6. Richard Lammonds	\$3.50	87	N/A	\$304.50 (trans.)
7. Paul Simons	\$3.50	73	\$650.00	\$255.50 (trans.) \$650.00 (video)
Deponent	Rate Per Page	No. Pages	Video Cost	Amount Sought
8. John Elder	\$3.25	79	\$550.00	\$256.75 (trans.) \$550.00 (video)
9. Shauna Hunter	\$3.25	83	\$550.00	\$269.75 (trans.) \$550.00 (video)
10. Benjamin Salazar	\$3.25	86	\$550.00	\$279.50 (trans.) \$550.00 (video)
11. Ricardo Colon	\$3.25	83	N/A	\$269.75
12. Stephanie Ball	\$3.25	104	\$550.00	\$338.00 (trans.) \$550.00 (video)
13. Anna	\$3.25	108	N/A	\$351.00

<sup>1</sup> The amount sought excludes costs attributable to extra copies, copies of exhibits, shipping and/or delivery charges, and diskettes.

<sup>2</sup> Although the actual cost of this transcript and several others was billed at the expedited rate of \$6.75 per page, Defendants seeks only the maximum rate allowable in this District of \$3.50 per page. *Compare Exhibit B.*

Hamilton				
14. Evan Hendricks	\$3.50	184	N/A	\$644.00
15. Stephanie Adams	\$1.25 <sup>3</sup> (copy)	38	N/A	\$47.50
16. Susan Cambron	\$1.25 (copy)	31	N/A	\$38.75
				= \$7,962.00 (TOTAL)

## (2) Hearing Transcripts

As mentioned above, Defendants' Motion to Compel the depositions of the Plaintiffs was granted after a hearing held by Magistrate Judge Grimm. At Judge Grimm's request, the hearing was conducted by telephone and was stenographically transcribed for the record. Due to the fact that the hearing transcript was required by the Court, Defendants request reimbursement for the cost of that transcript. As set forth in **Exhibit C** attached hereto, Defendants were charged \$150.00 for the hearing transcript, excluding shipping and handling charges.

### B. Witness Expenses

Pursuant to 28 U.S.C. § 1920(3), Defendants also seek \$61.90 for deposition witness fees incurred in this litigation. *See Exhibit D.* Plaintiffs' expert, Evan Hendricks, was paid \$61.90, which includes the \$40 statutory witness fee as well as travel expenses (60 miles x \$0.365 per mile), pursuant to 28 U.S.C. § 1821. As stated above, Mr. Hendricks' deposition was used in the motion for summary judgment filed by the Defendants and ultimately granted by the Court. *See Paper No. 177.*

### C. Photocopies

<sup>3</sup> Although the actual costs of the copies of Ms. Adams' and Ms. Cambron's transcripts were billed at a rate of \$2.75 and \$1.95 per page, respectively, Defendants seek only the maximum allowable rate for copies in this District of \$1.25 per page.

The cost of copying documents are recoverable where the copies are necessary for pretrial, trial, or appeal. See 28 U.S. C. § 1920(4); *Advance Bus. Sys.*, 287 F.Supp. at 164. Defendants seek reimbursement for the copying expenses associated with the following filings, which were necessarily incurred in the defense of this litigation. See **Exhibit E**.

<b>Purpose of Copies</b>	<b>Rate Per Page</b>	<b>No. of Pages<sup>4</sup></b>	<b>Amount</b>
Defendants' Motion for Sanctions and to Compel Discovery Responses; Corrected Memorandum in Support; Exhibits thereto (Paper No. 59)	\$ 0.10	316	\$31.60
Defendants' Motion to Depose Rodney Sweetland, Esquire; Renewed Motion Re; Same (Paper Nos. 77 and 94) <sup>5</sup>	\$ 0.10	368	\$36.80
Defendants' Renewed Motions for Sanctions and to Compel Discovery Responses (Paper Nos. 96 and 116)	\$ 0.10	338	\$33.80
Defendants' Opposition to Plaintiffs' Motion to Amend to Add Class Action Allegations (Paper No. 121)	\$ 0.10	354	\$35.40
Defendants' Motion to Dismiss for Failure of Discovery and Reply to Plaintiffs' Opposition thereto (Paper Nos. 153 and 187)	\$ 0.10	318	\$31.80
Defendants' Opposition to Plaintiffs' Objections to Magistrate Judge's Order of July 23, 2002 (Paper No. 158)	\$ 0.10	262	\$26.20
Defendants' Cross Motion for Summary Judgment; Opposition to Plaintiffs' Motion for Partial Summary Judgment and Memorandum in Support and Reply (Paper Nos. 177 and 204)	\$ 0.10	896	\$89.60
			= <b>\$285.20</b> <b>TOTAL</b>

Accordingly, Defendants request that they be awarded deposition transcript and video transmission fees in the amount of \$7,962.00; hearing transcript fees in the amount of

<sup>4</sup> The number of pages for each document includes the exhibits thereto and is multiplied by two, in order to account for (1) the copy sent to opposing counsel; and (2) the copy filed with the Court pursuant to Local Rule 105.2.

<sup>5</sup> Although Defendants were awarded sanctions on two separate occasions in this case, they were only awarded costs on one occasion, and reimbursement for such costs are not being requested herein. See Paper Nos. 127 and 131.

\$150.00; witness fees in the amount of \$61.90 and photocopying fees in the amount of \$285.20; for a total of \$8,459.10.

Respectfully submitted,

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\* \* \* \* \*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 1st day of April, 2003, a copy of the Bill of Cost and Defendants' Memorandum in Support of its Bill of Costs with accompanying Exhibits A through E which were electronically filed in this case were mailed, first-class, postage prepaid to:

John T. Murray, Esquire  
Sylvia M. Antalis, Esquire  
Murray & Murray  
111 East Shoreline Drive, P.O. Box 19  
Sandusky, Ohio 44871-0019

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